

[Source: Subcommittee of the Standing Committee on Children and Family Law of the Judicial Council, August 30, 2004. Provided to the Child Welfare Legislative Oversight Panel for consideration at its September 23, 2004 meeting.]

PLACING A MINOR IN PROTECTIVE CUSTODY

(1) A parent may not be deprived of the care, custody and control of their minor child without notice and an opportunity to be heard, unless the provisions of (2)(a), (2)(b) or (2)(c) are satisfied.

(2) A peace officer, child welfare worker or other state officer may not enter the home of a minor who is not under the jurisdiction of the court, remove a minor from the minor's home or school, or take a minor into protective custody unless:

- (a) There are exigent circumstances where a minor must be placed in protective custody to protect against an immediate threat to the minor's health or safety; or
- (b) A warrant has issued placing the child into protective custody; or
- (c) By consent of the minor's parent or guardian who has legal custody.

(3) If a child is placed into protective custody by a state officer, peace officer or child welfare worker, under circumstances described above in subsection (2), a shelter hearing shall be held as described in Section 78-3a-306.

(4) (a) The court may issue a warrant authorizing a peace officer, child welfare worker or other state officer to enter a home or other premises to search for a minor and take the minor into protective custody if it appears to the court upon a verified petition, recorded sworn testimony or an affidavit sworn to by a peace officer or any other person, and upon examination of other witnesses, if required by the judge, that there is probable cause to believe that:

- (i) there is an imminent threat to the health or safety of a minor which under the circumstances requires that the minor be placed in protective custody; and
- (ii) giving the parent or guardian notice and an opportunity to be heard should not be required.

(b) Pursuant to Section 77-23-210, a peace officer making the search may enter a house or premises by force, if necessary, in order to remove the child.

(c) The person executing the warrant shall then take the minor to a place of shelter designated either by the court or the Division of Child and Family Services.

(5) Alternatively, a child may be placed into protective custody by court order after a hearing has been held before the court, and the court finds that the provisions of Section 78-3a-301 have been met. Requests for this type of hearing shall be titled "Motion for Expedited Placement in Protective Custody." Personal service of such motions and notices of hearing on such motions may be made by workers or agents of the Division of Child and Family Services. Such motions:

- (a) shall be heard by the court within 72 hours from the filing of the motion, excluding weekends and holidays;
- (b) shall be considered a shelter hearing under Section 78-3a-306; and

(c) shall be governed by the procedures and requirements of Sections 78-3a-306, 78-3a-307 and Rule 13 of the Utah Rules of Juvenile Procedure.

TO BE RENUMBERED:

U.C.A. § 78-3a-305(2)

(b) If a petition is requested by the division, the attorney general shall file the petition within 72 hours of the completion of the investigation and request, excluding weekends, and holidays, if:

- (i) the child who is the subject of the requested petition has not been removed from his home by the division; and
- (ii) without an expedited hearing and services ordered under the protective supervision of the court, the child will likely be taken into protective custody.

U.C.A. § 78-3a-308(3)

In the case where a petition has been filed but the child is not in protective custody or temporary custody, the court shall give scheduling priority to the pretrial and adjudication hearings on the petition if the division indicates in the petition that without expedited hearings and services ordered under the protective supervision of the court the child will likely be taken into protective custody.